

No. 20-1146

In The
Supreme Court of the United States

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PAMELA SMITH,

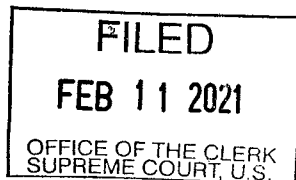
Petitioner,

v.

PACEMONITOR, LLC; OKLAHOMA
ATTORNEY GENERAL; TULSA COUNTY
DISTRICT ATTORNEY; and DON COCHRAN,

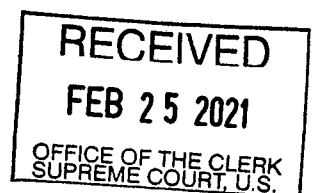
Respondents.

— ♦ —
**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit**



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PETITION FOR WRIT OF CERTIORARI

— ♦ —
PAMELA SMITH
Pro Se
P.O. Box 470261
Tulsa, Oklahoma 74146
(918) 991-3314



QUESTIONS PRESENTED

1. Whether the process petitioner received in this case is sufficient to satisfy the substantive and procedural due process standard.
2. Whether “*Rule 60(b)(4)*” strikes a balance between the need for finality of judgement and the importance of ensuring that litigants have a full and fair opportunity to litigate a dispute.
3. Whether the evidence before this court negates the false narratives presented by the Defendant in *Smith v. Department of Public Safety*, CIV0035_C.J. and rises to the level of gross injustice that demands departure from observance of the doctrine of Res judicata.
4. Whether the Tulsa County District Attorney History file Inquiry Form (Exhibit A) filed November 8, 2019, No. 4:00_cv_00035, U.S. District Court clearly indicates “Rape by instrumentation” by Donald Reed Cochran with a glass saltshaker that was put the (victim’s) Pamela Smith’s vagina was shown to the victim by Oklahoma Highway Patrol Trooper George Randolph, #22, also negating the false narrative presented by the Defendant in *Smith v. Department Public Safety*, Civ_0035_CJ.
5. Whether there still exists an ongoing conspiracy to collude and hide Defendants/Respondents Tulsa County Oklahoma District Attorney Office’s destruction of the one piece of tangible evidence (i.e., a glass saltshaker) with the petitioner’s DNA all over it.

QUESTIONS PRESENTED – Continued

6. Whether the Nature Of The Action brought pursuant to the provisions of the Civil Rights Act of 1871, 42 U.S.C. Sec. 1983 and 42 U.S.C. Sec. 1985 gives rise to unlawful deprivation of rights and conspiracy to interfere with rights, intentional infliction of emotional distress, disparate treatment based on race, and defamation leading to the unconstitutional dismissal of the Complaint by Petitioner Pamela Smith.

RELATED CASES

Smith v. Donald Reed Cochran, Department of Public Safety, No. 97-841970. Entered Sept. 17, 1997.

Smith v. Donald Reed Cochran, State of Oklahoma Department of Safety, #159046, Dec. 17, 1998.

Smith v. Tim Harris, Tulsa County District Attorney, No. 004-08-99011-00. Entered Mar. 3, 1999.

Smith v. Donald Cochran, Appellant No. 01-5085. 10th Circuit Court of Appeal, Denver, CO. Entered Aug. 12, 2003.

Smith v. Donald Cochran, No 00-CV-0035-C(J). District Court for the Northern District of Oklahoma. Entered Mar. 2, 2004.

Smith and Rowe v. Tulsa County, CJ-2004-03615, Petition for Tulsa County Grand Jury. Entered June 4, 2004.

Smith v. Tim Harris, Tulsa County District Attorney, Drew Edmondson, Attorney General for the State of Oklahoma, No. CJ-2004-03615 Grand Jury. Entered Dec. 4, 2004.

Smith v. Tim Harris, Tulsa County District Attorney, et al., No. 19-6123, U.S. Court of Appeals for the Tenth Circuit of Tulsa County. Entered Oct. 25, 2019.

Smith v. PacerMonitor, LLC, 19CV11849, U.S. Attorney's Office Civilian Crime Report, Southern District of New York. Entered Dec. 16, 2019.

Smith v. PacerMonitor, LLC, Oklahoma Attorney General, Tulsa County District Attorney, 19CV11849, U.S. Southern District of New York. Entered Dec. 26, 2019.

RELATED CASES – Continued

U.S. District Court for the Western District v. State of Oklahoma District Attorney, State of Oklahoma, ex rel., Department of Public Safety, Oklahoma Attorney General, No. CIV-19-426D. Entered May 9, 2019.

Smith v. Tom Wiliford, Tulsa County, PacerMonitor, No. 20-CV-126-CVE-FHM. U.S. District Court. Entered Mar. 31, 2020.

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OPINIONS BELOW

The Judgment of the 10th Circuit Court was filed September 18, 2020, No. 20-5042 (D.C. 4:20_CV_00126_CVE_FHM). The order and judgment sought to be received was made and entered on April 3, 2020.

JURISDICTIONAL STATEMENT

The order and judgment sought to be received was made and entered on April 3, 2020. The jurisdiction of the District Court was invoked pursuant to 28 U.S.C. Sec. 1331 in that this action arose under 42 U.S.C. Sec. 1983. The supplemental jurisdiction of the court was also invoked under 28 U.S.C. Sec. 1367. Petitioner's claim arose out of incidents to her State incarceration, which incidents were in violation of the Eighth Amendment and Fourteenth Amendment of the U.S. Constitution, Cruel and Unusual Punishment and Due Process of Law.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1254(1) in that this appeal a final decision of the 10th Circuit Court of Appeals and the District Court.

The Judgment of the 10th Circuit Court was filed September 18, 2020, No. 20-5042 (D.C. 4:20_CV_00126_CVE_FHM) N.D. Okla.) (*See* copy of Pamela Smith, Appellant's Opening Brief, filed

July 17, 2020 in The U.S. Court Of Appeals For The Tenth Court.)



CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Filed U.S. Court of Appeals Tenth Circuit

August 12, 2003

Patrick Fisher, Clerk

No. 01-5085

Appeal from the United States District Court for the Northern District of Oklahoma

(D.C. No. 00-CV-35-c)

Defendant Don Cochran appeals the district court's denial of qualified immunity in the 42 U.S.C. Sec. 1983 action. Plaintiff Pamela Smith brought this action in the U.S. District Court for the Northern District of Oklahoma alleging violation, *inter alia*, of her Eighth Amendment right to be free from the use of excessive force against her. We have jurisdiction pursuant to 28 U.S.C. Sec. 1291, *see Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985) and AFFIRM.

This is expanded upon in the Discussion section #1 with the conclusion:

We conclude that the Smith has carried her burden of showing that the Cochran violated her constitutional right to be free from the use of the excessive force against her and that

the right was clearly established at the time of the alleged violation. Accordingly, Cochran is not entitled to qualified immunity and we AFFIRM the decision of the district court denying Cochran's motion for summary judgment on that issue.

Footnotes

2. The parties limited their arguments in their opening briefs on appeal to the issue of the alleged Eighth Amendment violation. We subsequently ordered supplemental briefing on whether Smith alleged facts establishing a violation of her substantive rights under the Due Process Clause of the Fourteenth Amendment. Because we resolve this case on the Eighth Amendment grounds, and the Eighth Amendment is the proper vehicle for evaluating excessive force claims involving prisoners, we do not address the parties' due process arguments. See *Whitley v. Albers*, 475 U.S. 312, 327 (1986).

3. This last element of the burden-shifting framework for summary judgment on questions of qualified immunity, although part of the analysis that must be conducted by the district court, is not relevant. Cochran focuses his appeal on the pure legal issue whether or not Smith has shown that he violated a clearly established constitutional right.

5. For the purposes of this appeal, we have accepted as true Smith's allegations that Cochran in fact had supervisory authority over her. As our opinion makes clear, Cochran

must have possessed custodial or supervisory authority over Smith in order for him to be liable under 1983 for the alleged Eighth Amendment violation. Whether he did possess such authority at the time of the alleged sexual abuse in this case is a factual matter to be determined at trial.

STATEMENT OF THE CASE

Former State prison inmate Pamela Smith filed Sec. 1983 suit alleging that State Driver's License Examiner, Don Cochran in both his individual and official capacity raped her with a "glass saltshaker" while she was on work release at the State Driver's License center, in violation of the Eighth Amendment, and pursuant to the provisions of the Civil Rights Act of 1871, 42 U.S.C. Sec. 1983 and 42 U.S.C. Sec. 1985.

The United States District Court for the Northern District Judge, 216 F. Supp. 2d 1286, denied examiner's motion for summary judgment based upon qualified immunity. Examiner appealed. The Court of Appeals, Ebel, Circuit Judge held that: (1) Examiner's alleged sexual contacts with inmate demonstrated use of excessive force and malice, sufficient to implicate Eighth Amendment; (2) State Department of Corrections delegated its penological and supervisory authority over work release inmates, so that the center's supervisory personnel bore duty under the Eighth Amendment to refrain from using excessive force against inmate; and (3) alleged non-consensual sex

between inmate and examiner violated clearly established Federal Law, and thus Don Cochran, the Respondent was not entitled to qualified immunity.

The Petitioner, Pamela Smith, asserts that the First Amendment Right to testify during the lower Court's Jury Trial was violated when the Trial Judge refused to allow her to use the term "rape." (*See Harmony Allen v. U.S. Supreme Court*, granted certiorari, October 13, 2020.)

Pamela Smith, Petitioner Pro Se, appeals the U.S. Court of Appeals for the Tenth Circuit Order and Judgment for lack of subject-matter jurisdiction under 28 U.S.C. Sec. 1291. The Petitioner's claims of rape are not barred by the statutes of limitations in this matter. This cause highlights an ongoing unlawful deprivation of rights as a result of undeniable challenges and difficulties the Petitioner experienced due to criminal activity perpetrated by Oklahoma State agencies, including tampering with evidence, perjury, obstruction of justice, and perverting the course of justice.

Re: (PREA; P.L. 108-79) – Prisoner Rape Elimination Act.

While Petitioner/Pro Se, Pamela Smith was incarcerated by the Oklahoma Department Of Corrections, (herein referred to as DOC), she was sent on work detail (duty) to the Oklahoma of Public Safety (herein referred to as DPS), as a janitor. During her stay at this job, she was watched over and supervised by Defendant/Respondent Don Cochran, in his capacity as facility correctional staff. During that time, Defendant/Respondent, in violation of the above "*PREA Act*,"

passed in 2003 with unanimous support from both parties in Congress effective August 20, 2012, did rape Petitioner by instrumentation of a “glass saltshaker,” that was put up the victim’s vagina. Such devilish and sadistic violent behavior by Defendant/Respondent, Don Cochran, constitutes sexual victimization, sexual assault and rape of a female prisoner; whether consensual or nonconsensual. Don Cochran, in his official capacity was responsible for almost every aspect of Petitioner’s life, and thus exerted enormous power over her as an inmate. The Defendant/Respondent, Don Cochran, had access to Petitioner Pamela Smith at will, and his ever-present contact served to reinforce the fear of retaliation if she reported the rape and his sadomasochistic whims.

The “Prisoner Rape Elimination Act” prohibits prison staff, guards, and custodian officials from bartering, trading favors or engaging in any form of sexual contact with an inmate; individuals who violate this Act are subject to disciplinary action and criminal prosecution. The threat of actual retaliation experienced by Petitioner Pamela Smith was enough in this case.

Petitioner brought this action against Respondent under 42 U.S.C. Sec. 1983, in that she was deprived of her Federal rights by the Respondent, a State employee. Particularly, Petitioner claimed a violation of her Eighth Amendment protection against cruel and unusual punishment. Respondent filed a motion for qualified immunity, which was denied by the Trial courts; *Smith v. Cochran*, 216 F. Supp. 1286 (N.D. Okla. 2001). This denial was affirmed by the Tenth Circuit

Court Of Appeals, *Smith v. Cochran*, 339 F.3d 1205 (10th Cir. 2003).

After remand of the case, the matter was tried to a jury, which resulted in a verdict for Respondent. Judgment was entered thereon, March 2, 2004. Petitioner filed a timely motion for a new trial, or alternately, for judgment notwithstanding the verdict. This motion was denied by order of trial court, July 15, 2004. A request for an extension of time to file a Writ Of Certiorari was made to the U.S. Supreme Court and an extension was granted to and included November 25, 2006.

Even though the person who committed the actual repeated rapes and aggravated rape of Petitioner Pamela Smith has been tried and prevailed: there still exists an ongoing conspiracy to collude and hide Defendant/Respondent Tulsa County Oklahoma District Attorney Office destruction of the one piece of tangible evidence (i.e., a glass saltshaker) that would not have been to be explained away. The hideousness of this cover-up protected their criminal conduct. Smith did not have to prove Cochran acted under color of State law. The court in prior ruling said, "the court concludes that Cochran acted under Color of State Law in sexually abusing inmate Smith, finding that "a Real Nexus" exists between the activity out of which the violation occurred" . . . *Doe*, 15 F.3d 452 n.4.

The Oklahoma Department of Corrections had a work project contract with the Oklahoma Department of Public Safety ("DPS") under which inmates would

perform janitorial services at two Driver's License Examination centers run by DPS in the Tulsa area, known as the Jenks and the Northside centers. Petitioner Smith was assigned to the DPS project and primarily worked the Northside center. Mr. Ed Spencer a Senior License Examiner and the DPS supervisors for the Jenks and Northside centers, would pick up Petitioner Smith at the Tulsa Community County Center ("TCCC") each workday and bring her to one of the DPS centers.

Incidents that occurred during that period included Cochran giving her a condom and suggesting that it would be for his later use, and his raping her with a saltshaker. Sexual abuse is repugnant to contemporary standards of decency and an inmate has a constitutional right to be secure in her body integrity, free from sexual abuse. *Hovater v. Robinson*, 1 F.3d 1063, 1068 (10th Cir. 1993). See *Barney v. Pulsipher*, 143 F.3d 1299, 1310 (10th Cir. 1998).

Pamela Smith, Petitioner's deprivations resulting from the several assaults and brutal rape with a saltshaker, with excessive force by Cochran were sufficiently serious to constitute a violation under the Eighth Amendment. See Letter of intense psychological diagnosis and posttraumatic disorder, related to the rape and sexual assaults by Cochran. (Appendix A1) *Stephen Hoyer, Ph.D.* See *Giron*, 191 F.3d at 1290 (quoting *White*, 475 U.S. at 320-21) Sexual abuse of a prisoner by an officer acting on behalf of corrections has not penological purpose, and is simply not part of that criminal offender's pay for her offenses against society.

Boddie v. Schneider, 105 F.3d 857, 861 (2d Cir. 1997). Cochran acted maliciously and sadistically. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). *Chapman v. Kleindienst*, 507 F.2d 1246 (7th Cir. 1974).

Oklahoma's Department of Corrections personnel informed Ed Spencer of the complaints, and the DPS commenced an internal investigation into Cochran's conduct, as a DPS employee. During this investigation, Cochran evaded to undergo a polygraph examination. He had previously failed a polygraph concerning similar conduct perpetrated in performance of his assigned tasks as a License Examiner at the DPS facilities. Cochran was forced to resign from DPS before the Internal Affairs investigation was completed for reasons he says were unrelated to the investigation.

After she was transferred from the TCC, Smith sought medical treatment for vaginal pain caused by Cochran's malicious and demonic use of a saltshaker to rape her. She received psychological counseling to treat emotional post-trauma she experienced, as a result of Cochran's sexual abuse. *See* Appendix (A-1).

Without his cloak of State authority, Cochran could not have performed the sexual assaults. *See Terry v. Adams*, 345 U.S. 461, 469-70 (1953). Also, *Gallagher*, 49 F.3d at 1456. Moreover, persons with official responsibilities, supervisory or custodial responsibilities for prisoners to whom the State of Oklahoma delegates its penological functions, become agencies or instrumentalities of the State. Whereas, subject to its constitutional limitation pursuant to the

Eighth Amendment. Cf. *Evans v. Newton*, 382 U.S. 296, 299, (1966). *West v. Atkins*, 487 U.S. 42, 57 (1988). *Dellis v. Correction Corp. of Am.*, 257 F.3d 508, 512 (6th Cir. 2001). *Aamijo*, 159 F.3d 1260. *U.S. v. Collins*, Nov. 2019.

◆

ARGUMENT

Pursuant to the foregoing, Petitioner contends that the jury verdict and denial for a new trial, is against the weight of the evidence, prejudicial error that occurred, and substantial justice has not been done. *Heyen v. U.S.*, 731 F. Supp. 1488, 1489 (D. Kans. 1990) (citing *Holmes v. Wack*, 464 F.2d 86, 88-89 (10th Cir. 1991). Pursuant to Rule 59(a) of the Federal Rules of Civil Procedure, a “new trial” may be granted to all or any of the parties, on all or part of the issues in this matter.

Black women raped within the prison system have been subject to scorn and laughter. Justice is a common thing, yet it is elusive. Men have sought its meaning and substance since time began. Plato shrugged that justice was nothing more than the wish of the strongest member of society. Jesus equated justice with brotherhood. Shakespeare saw it a matter of mercy. I am here to tell you that justice is the eventual working out of the will of God as indicated in the fundamental principles of truth. Justice is the antithesis of wrong, the weapon God will use to bring judgment

upon the world, the purpose and consummation of His coming.



CONCLUSION

Petitioner respectfully requests that the Court grant the petition for a writ of certiorari.

Respectfully submitted,

PAMELA SMITH

Pro Se

P.O. Box 470261

Tulsa, Oklahoma 74147

919-991-3314